



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

MEMORIAL HERMANN HOSPITAL SYSTEM
3200 SW FREEWAY SUITE 2200
HOUSTON TX 77027

Carrier's Austin Representative Box

54

MFDR Date Received

JUNE 20, 2007

Respondent Name

TEXAS MUTUAL INSURANCE CO

MFDR Tracking Number

M4-07-6855-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary Dated June 19, 2007: "The carrier issued an initial payment of \$2,929.53 under the per diem methodology even though total charges exceeded the stop loss threshold. The amounts paid by the carrier were insufficient as the hospital's total charges exceeded the stop loss threshold of the acute care inpatient hospital fee guideline...This injured employee was treated at Memorial Hermann from June 20, 2006 through August 6, 2006. The complications from the fractures suffered from the fall from a roof caused this injured employee to receive extensive services and supplies. The nature of the patient's extensive injury and post operative care required the patient to incur unusually costly services and medical supplies during his stay...In this case, the hospital's usual and customary charges for room and board, ancillary services and drug charges amounted to \$51,322.00, and exceeded the stop loss threshold found in the Acute Care Inpatient Hospital Fee Guideline, Rule 134.401 (c)(6)...Because the hospital's usual and customary charges exceeded the stop loss threshold, payment should have been made at 75% of total charges."

Requestor's Supplemental Position Summaries Dated November 15, 2011 and November 28, 2011:

"The Court further determined that to apply the Stop-Loss Exception, a hospital is required to demonstrate that its total audited charges exceed \$40,000, and the admission involved unusually costly and unusually extensive services to receive reimbursement under the Stop-Loss method." "Based upon this information, Memorial Hermann has met its burden under the Stop-Loss exception and is entitled to the additional reimbursement."

Affidavit of Michael C. Bennett dated November 14, 2011: "I am the System Executive of Patient Business Services for Memorial Hermann Healthcare System (the 'Hospital')." "The medical records indicate that this injured worker suffered severe and multiple trauma due to an fall through a roof at work. He underwent extensive medical procedures during his course of treatment, including this post orthopedic aftercare and therapy." "The charges reflected on the attached Exhibit A are the usual and customary fees charged for like or similar services and do not exceed the fees charged for similar treatment of an individual of an equivalent standard of living and paid by someone acting on that individual's behalf." "On the dates stated in the attached records, the Hospital, as noted, provided surgical care and subsequent post operative services to this patient who incurred the usual and customary charges in the amount of \$51,322.00 which is a fair and reasonable rate for the services and supplies provided during this patient's hospitalization. Due to the nature of the patient's injuries and need for surgical intervention, the admission required unusually costly services."

Affidavit of Patricia L. Metzger dated November 21, 2011: "I am the Chief of Care Management for Memorial Hermann Healthcare System (the 'Hospital')." "This patient was admitted and treated at the skilled nursing facility for physical therapy and orthopedic aftercare due to a pelvic fracture and other traumatic injuries due to a fall from a roof. The patient's injuries and need for aftercare were extensive. The patient was admitted due to complications from his injuries and surgical treatment which required a skilled nursing facility level of treatment. The patient was admitted status post right sacroiliac screw and right superior inferior pubic fracture, treated with a pelvic external fixate. He also had some non-operative right traverse process fractures at L5, L4 and S1. The principal diagnosis code was V548.9. the multiple procedures and course of treatment performed extensive due to the nature of the patient's injuries and need for further treatment." "Based upon my review of the records, my education, training, and experience in patient care management, I can state that based upon the patient's severe injuries, diagnosis and course of treatment, the services and procedures performed on this patient were complicated and unusually extensive."

Amount in Dispute: \$35,561.97

RESPONDENT'S POSITION SUMMARY

Respondent's Packet Dated July 11, 2007: "It is Texas Mutual's position that the denial of lack of preauthorization is appropriate and that the requestor exceeded the number of approved day(s) and the approved time frame given to complete the service."

Response Submitted by: Texas Mutual Insurance Company, 6210 E. Hwy 290, Austin, Texas 78723

Respondent's Supplemental Position Summary Dated September 8, 2011: "Now the requestor in its DWC-60 packet hardly references its problems with the lack of preauthorization for those days after 6/21/06. The only reference to it is a letter dated 6/19/07 from Mason Meyer who states simply. "Prior to instituting medical dispute resolution, I wanted to contact you one last time and request your reconsideration of the underpayment of this claim. As you know, this inpatient admit was preauthorized by your employee. The total charges for this inpatient admit amounted to \$51,322.00..." Mr. Meyer writes as if the preauthorization was a foregone conclusion with the main issue being solely how much more they can get paid based on the stop-loss payment method. As unpleasant as it may be to the requestor, the unavoidable fact is that the requestor did not obtain preauthorization for the additional three weeks the claimant was in the skilled nurse facility. Another unpleasant fact to consider is that there appears to have been no reason or set of reasons that prevented the requestor from seeking authorization from Texas Mutual for a date extension of the initial preauthorization. When Texas Mutual states "there appears to have been no reason or set of reasons" it means the requestor has not offered up any. The requestor's DWC-60 packet contains no information substantiating its position (a) that it had preauthorization beyond the five days granted by Texas Mutual, (b) that SNF's qualify for stop-loss payments, (c) that the stop-loss exception has only to exceed \$40,000.00 in audited charges, and (d) that the admission was unusually extensive or costly."

Response Submitted by: Texas Mutual Insurance Company, 6210 E. Hwy 290, Austin, Texas 78723

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
June 6, 2006 through August 6, 2006	Inpatient Hospital Services	\$35,561.97	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305 and §133.307, 31 *Texas Register* 10314, applicable to requests filed on or after January 15, 2007, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.

3. 28 Texas Administrative Code §134.1, 31 *Texas Register* 3561, effective May 2, 2006, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable division fee guideline.
4. 28 Texas Administrative Code §134.600, 31 *Texas Register* 3566, effective May 2, 2006, requires preauthorization for inpatient hospitalizations.
5. Texas Labor Code §413.011(d) requires that fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. It further requires that the Division consider the increased security of payment afforded by the Act in establishing the fee guidelines.

The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of Benefits

- CAC-W10- No maximum allowable defined by fee guideline. Reimbursement made based on insurance carrier fair and reasonable reimbursement methodology.
- CAC-62- Payment denied/reduced for absence of, or exceeded pre-certification/authorization.
- CAC-97- Payment is included in the allowance for another service /procedure.
- 217 – The value of this procedure is included in the value of another procedure performed on this date.
- 426 - Reduced to fair and reasonable.
- 711 – Length of stay exceeds number of days previously preauthorized documentation does not support medical necessity for additional days.
- CAC-W4- No additional; reimbursement allowed after review of appeal/reconsideration.
- 891 - The insurance company is reducing or denying payment after reconsideration.
- 930 – Preauthorization required, reimbursement denied.

Issues

1. Does a preauthorization issue exist in this dispute?
2. Is the requestor entitled to additional reimbursement?

Findings

1. The respondent denied reimbursement for forty two days of skilled nursing facility services based upon “CAC-62- Payment denied/reduced for absence of, or exceeded pre-certification/authorization”, “711 – Length of stay exceeds number of days previously preauthorized documentation does not support medical necessity for additional days”, and “930 – Preauthorization required, reimbursement denied”.

The respondent submitted a copy of a preauthorization report approving five days of inpatient rehabilitation/skilled nursing facility services beginning of June 26, 2006 through June 21, 2006.

28 Texas Administrative Code §134.600(q)(1) states “The health care requiring concurrent review for an extension for previously approved services includes: (1) inpatient length of stay.”

The requestor did not submit documentation to support preauthorization was obtained for the additional forty two days; therefore, the respondent has supported denial of reimbursement based upon “CAC-62, 711 and 930”.

2. This dispute relates to inpatient skilled nursing facility services provided in a hospital setting with reimbursement subject to the provisions of 28 Texas Administrative Code §134.1 and Texas Labor Code §413.011(d).

28 Texas Administrative Code §134.401(a)(2) states “Psychiatric and/or rehabilitative inpatient admissions are not covered by this guideline and shall be reimbursed at a fair and reasonable rate until the issuance of a fee guideline on these specific types of admissions.”

28 Texas Administrative Code §134.1 requires that, in the absence of an applicable fee guideline, reimbursement for health care not provided through a workers' compensation health care network shall be made in accordance with subsection §134.1(d) which states that “Fair and reasonable reimbursement: (1) is consistent with the criteria of Labor Code §413.011; (2) ensures that similar procedures provided in similar circumstances receive similar reimbursement; and (3) is based on nationally recognized published studies, published Division medical dispute decisions, and values assigned for services involving similar work and resource commitments, if available.”

Texas Labor Code §413.011(d) requires that fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. It further requires that the Division consider the increased security of payment afforded by the Act in establishing the fee guidelines.

28 Texas Administrative Code §133.307(c)(2)(G) requires the requestor to provide "documentation that discusses, demonstrates, and justifies that the amount being sought is a fair and reasonable rate of reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement) when the dispute involves health care for which the Division has not established a maximum allowable reimbursement (MAR), as applicable." Review of the submitted documentation finds that:

- The requestor states in the position summary that "The carrier issued an initial payment of \$2,929.53 under the per diem methodology even though total charges exceeded the stop loss threshold. The amounts paid by the carrier were insufficient as the hospital's total charges exceeded the stop loss threshold of the acute care inpatient hospital fee guideline" "Because the hospital's usual and customary charges exceeded the stop loss threshold, payment should have been made at 75% of total charges".
- The requestor asks for reimbursement under the stop loss provision found in 28 Texas Administrative Code §134.401(c)(6). As stated above, the Division finds that the disputed services are not applicable to 28 Texas Administrative Code §134.401.
- The requestor did not provide documentation to demonstrate how it determined its usual and customary charges for the disputed services.
- The Division has previously found that a reimbursement methodology based upon payment of a hospital's billed charges, or a percentage of billed charges, does not produce an acceptable payment amount. This methodology was considered and rejected by the Division in the *Acute Care Inpatient Hospital Fee Guideline* adoption preamble which states at 22 Texas Register 6276 (July 4, 1997) that:
"A discount from billed charges was another method of reimbursement which was considered. Again, this method was found unacceptable because it leaves the ultimate reimbursement in the control of the hospital, thus defeating the statutory objective of effective cost control and the statutory standard not to pay more than for similar treatment of an injured individual of an equivalent standard of living. It also provides no incentive to contain medical costs, would be administratively burdensome for the Commission and system participants, and would require additional Commission resources."
- The requestor did not submit documentation to support that the payment amount being sought is a fair and reasonable rate of reimbursement.
- The requestor does not discuss or explain how payment of the requested amount would satisfy the requirements of 28 Texas Administrative Code §134.1.

The request for additional reimbursement is not supported. Thorough review of the documentation submitted by the requestor finds that the requestor has not demonstrated or justified that payment of the amount sought would be a fair and reasonable rate of reimbursement for the services in dispute. Additional payment cannot be recommended.

The Division would like to emphasize that individual medical fee dispute outcomes rely upon the evidence presented by the requestor and respondent during dispute resolution, and the thorough review and consideration of that evidence. After thorough review and consideration of all the evidence presented by the parties to this dispute, it is determined that the submitted documentation does not support that the disputed services were preauthorized per 28 Texas Administrative Code §134.600. In addition, the requestor failed to support that the reimbursement amount sought by the requestor is fair and reasonable in accordance with 28 Texas Administrative Code §134.1 and Texas Labor Code §413.011(d). As a result, the amount ordered is \$0.00.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 additional reimbursement for the services in dispute.

Authorized Signature

_____ Signature	_____ Medical Fee Dispute Resolution Officer	_____ 11/12/2012 Date
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_____ Signature	_____ Medical Fee Dispute Resolution Manager	_____ 11/12/2012 Date
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YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.